



August 21, 2008

Memorandum For: Connecticut General Assembly

From: Independent Connecticut Petroleum Association

Regarding: FY09 Connecticut Energy Assistance Program

Background

Between 2003 and 2007 ICPA, on behalf of heating oil retailers, worked closely with the Department of Social Services [DSS], Community Action Agencies and others to bring reforms to the Connecticut Energy Assistance Program [CEAP], as retailers had asked ICPA to do. No one is more committed to fully funding LIHEAP than ICPA is. ICPA has lobbied Congress for years, most recently this year as a part of the National LIHEAP Coalition with NEFI and PMAA, to get Congress to appropriate \$5.1 billion - a doubling of federal LIHEAP funding for FY09. *No one understands the critical need LIHEAP fills in the lives of our neediest customers more than we do.*

All that said, ICPA succeeded in passing legislation bringing reforms to the way the program operates in Connecticut law that was ignored. Protesting the construction of the program and its many failures to follow state law managed to get ICPA wrongly and maliciously accused of violating anti-trust law. At no time has ICPA ever, or will we ever, attempt to coordinate any boycott or other illegal activity to get retailers to deny service to this program. We have and will continue to tell retailers what the program contains, inform retailers of the State's publicly announced positions on retailer's involvement in the program and point out to retailers and everyone else the shortcomings of the program.

One would think everyone would recognize that the very essence of representative democracy under our Constitutional system that we and everyone else has a protected right to speak our minds about what we consider the shortcomings, mistakes, and errors of law there are in this program.

Last year we and many retailers attended DSS's four public briefings where DSS said they could change the program if enough retailers complained. Retailers complained and DSS changed nothing - ICPA staff and some retailers got subpoenas from the Attorney General's office for their protests. DSS has received dozens of suggestions from ICPA about changes that need to be made in this program, and the law change that was enacted in 2007 should have further compelled DSS to reform the CEAP program.

It should come as no surprise to anyone that ICPA made the decision to not be involved in the construction of the 2008/09 program, a decision based on dozens of recommendations DSS received from ICPA and heating oil retailers that DSS ignored.

2008/2009 Program

The Office of Policy & Management and the Department of Social Services released the 2008/2009 Connecticut Energy Assistance Program state plan (end of this document). The Legislature's three committees of cognizance (Appropriations, Human Services, & Energy) will need to meet to either approve the plan as presented, make changes to the plan, or take no action which ultimately allows the plan to be implemented as written. ICPA presented all our objections to this very same process last year, with all of the program's errors and shortcomings, and no changes were made.

The following are the key details of the program for 2008/2009:

- The margin-over-rack restriction for heating oil retailers will remain at 31 cents and off the New Haven index though the plan does not state whether it is New Haven High, Low, or Average;
- The discount-off-retail option that was added last year has been dropped for this year;
- A differential will be paid by county in addition to the 31 cents (the differential ranges from 1.7 cents to 7 cents);
- CEAP deliveries will begin on November 1st;
- The index in which the fixed margin will be based on will be issued by OPIS (formerly based on the Journal of Commerce);
- Kerosene will no longer be subject to the margin-over-rack program;
- Propane retailers, kerosene retailers, natural gas utilities, electricity utilities, wood, and coal dealers will all be paid the price that they charge non-CEAP customers and none of the households served by these fuels will be served by a fuel subject to a margin-over-rack restriction;
- Only heating oil retailers will be required to serve households under a margin-over-rack restriction;
- The state plan does not deal with timeliness of payments (i.e. 30 day terms) so retailers will have to wait until the vendor contract is released;
- The CEAP plan ignores the state statute that we passed in 2007 that requires the state to design a basic grant that does not discriminate against households based on the type of energy used for heating (Sec. 16a-41a [E]). In fact, the state has, once again, designed a program explicitly discriminatory by designing a plan where only heating oil retailers are subject to a margin-over-rack system. Every other energy source is paid at their prevailing regular rate.
- When DSS says they are just trying to stretch scarce federal dollars, as they said last year, apparently the stretching only is applicable to heating oil - as every other fuel vendor is paid their full rate. Utilities who contribute matching services go to the DPUC and get those costs built into the ratebase that all ratepayers pay. There is no shared sacrifice on the part of all fuel vendors.

Below you will find excerpts from the plan that pertain to heating oil dealers.

XVI. VENDORS

All energy vendors wishing to participate in the CEAP must sign a Vendor Document which details the conditions under which payments will be made to each type of vendor. The only exceptions will be vendors of wood and coal, whose practices as energy suppliers to CEAP clients will be governed by existing state statutes.

The purpose of the Vendor Document is to ensure program standardization, fair treatment of CEAP customers by vendors, and to establish the conditions for payments on behalf of customers receiving assistance from the CEAP, including a requirement that vendors provide the same price discounts (including early payment discounts) to customers receiving CEAP assistance as the vendors provide to similarly situated customers.

The Vendor Document will also establish the pricing/reimbursement mechanism that the state will utilize on behalf of oil heated households.

In accordance with Public Act 16a-23m, all heating oil and propane vendors wishing to participate in the CEAP must provide verification that they have registered with the Department of Consumer Protection (DCP).

Vendors who sign the Vendor Document and verify their registration with the DCP will be placed on a list of "approved vendors" which will be supplied to the CAAs by DSS. Such documents do not guarantee vendors the right to participate in the CEAP should the State establish, in accordance with the provisions of Section 4-28b of the Connecticut General Statutes, further criteria for participation in the CEAP, or in cases where the vendor is suspected of fraud, misrepresentation or of violating the Vendor Document.

The State reserves the right to inspect/audit the records of any deliverable fuel vendor presenting a bill for payment by the CEAP, in order to verify the bill either before or after payment is made.

The State reserves the right to inspect/audit the records of utility companies receiving payment under the CEAP, in order to verify that the proper customer accounts are being credited.

XVII. FIXED MARGIN PRICING PROGRAM

In response to requests from the deliverable fuel industry, the department will use information from the Oil Price Information Service (OPIS) to determine the daily Fixed Margin Price, which will be used to pay oil vendors making deliveries to CEAP households. The Fixed Margin Price will be based on the daily OPIS Standard No. 2 Fuel Oil with 0.3 sulfur content, Gross No. 2 Distillate Price, plus a fixed margin of 31 cents per gallon.

In addition, this year's Fixed Margin Pricing Program will also include county differentials in the pricing mechanism. The increase in the fixed margin and the county differentials are proposed in response to increases in transportation and delivery costs.

The differentials vary from county to county, and are determined based on each county's proximity to the New Haven harbor.

County	Margin-Over New Haven Rack Payment
New Haven	32.7¢
Middlesex	34.3¢
Hartford	34.9¢
New London	35.2¢
Fairfield	35.3¢
Tolland	36.8¢
Litchfield	37.7¢
Windham	38.0¢

Please note, since each county has a different county differential, the Total Fixed Margin Price on any given day will vary from county to county.

Vendors who deliver in multiple counties will be paid in accordance to the county differential in which the delivery is made. DSS will determine all fixed margin prices.

The pricing mechanism may be adjusted by DSS to respond to unanticipated changes in the #2 heating oil market.

Vendors must put their retail price on all delivery tickets, bills or statements. If the vendor's posted retail price is lower than the Fixed Margin Price, the vendor will be paid in accordance with the retail price.

For those deliveries of home heating oil paid by the program, vendors shall not charge CEAP customers the difference between their retail price and the CEAP payment.

DSS staff may monitor and verify the accuracy of the retail prices reported by vendors.

XVIII. DELIVERABLE FUEL PURCHASING OPTIONS

The Department will continue to explore options to purchase home heating oil on behalf of CEAP households. These options may include, but are not limited to, "off season" purchasing, "pre buy" and vendor/wholesaler bidding. The implementation of any of these purchasing options may require the establishment of a state receivable account.

Finally.

There is absolutely nothing ICPA has ever done, or will ever do, to try to get retailers to either participate or not participate in the CEAP program. ICPA respects that each retailer makes their own decisions. We have and will continue to inform retailers about the content of the construction of the CEAP program and our opinion of its relative fairness to heating oil retailers. DSS and OPM have been and continue to be aware of ICPA's positions on CEAP issues such as; [a] either every energy source should be subject to a margin-over-rack restriction or no energy source should be subject to a

margin-over-rack restriction, [b] that the level of margin-over-rack restriction has been and continues to be woefully inadequate given the difficulties most heating oil retailers have with capitalization and working capital and profitability, [c] that the statutory changes made in 2007 require the plan to eliminate discriminatory differences in how fuels are treated and that means the singling out of heating oil to be subject to a margin-over-rack restriction needs to be eliminated.

Heating oil retailers are in no different position relative to the CEAP program than are health care providers who are balking at signing up for the state's Charter Oak health insurance program. Under Charter Oak, health care providers are reimbursed at 50¢-60¢ on the \$1 [dollar] for services provided and that has caused a shortage of health care providers joining the Charter Oak program. *Every business that serves those in need wants to help those in need, and at the same time every business needs to stay in business in order to provide those critical services. When heating oil retailers are compelled by poor economics and reimbursements to not participate in the CEAP program that hurts competition, it hurts low income consumers and such a circumstance is driven by DSS and its choice of reimbursement practices.*

ICPA is further concerned about it's right to bring change to the CEAP program, and to be critical for the lack of change because of DSS Commissioner Starkowski's attempt earlier this year to sue several legal services lawyers over their criticism of DSS's Request for Proposal to managed care organizations to administer the State's Medicaid programs. Attorney General Blumenthal properly refuted Commissioner Starkowski's effort as an unwarranted assault on the legal aid lawyers' "significant, well-established First Amendment rights and principles." Likewise, DSS's attempt to spread the unfounded, incorrect boycott rumor about ICPA is a similar attempt to silence ICPA and infringe upon its First Amendment rights.